

October 5, 2017

WISCONSIN SUPREME COURT

TABLE OF PENDING CASES

Clerk of Supreme Court
Telephone: (608) 266-1880
Facsimile: (608) 267-0640
Web Site: www.wicourts.gov

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The following table describes pending cases the Supreme Court has accepted on petition for review, bypass, certification and original jurisdiction.

The cases included for the first time (that is, the most recently accepted cases) are marked with an * next to the case number. After the Supreme Court decides a case, the date of oral argument or date of submission on briefs is replaced with the date of the Supreme Court decision and abbreviated mandate. That mandate will generally be listed in the table for two months and then the case will be removed from the table.

The information in the table, from left to right, is as follows:

- the case number;
- an abbreviated caption of the case (case name);
- a statement of the issue(s);
- the date the Supreme Court accepted the case;
- the method by which the case came to the Supreme Court: REVW = Petition for review, CERT = Certification, CERQ = Certified Question, BYPA = Petition to bypass, ORIG = Original Action, WRIT = Petition for supervisory writ, REMD = Remanded from the U.S. Supreme Court;
- the date of oral argument or submission on briefs; or the date of the Supreme Court decision and an abbreviated mandate;
- the Court of Appeals district from which the case came, if applicable; the county;
- the date of the Court of Appeals decision, if applicable;
- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.

The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

The following table covers cases accepted and decisions issued through **October 5, 2017**. Please direct any comments regarding this table to the Clerk of Supreme Court, P.O. Box 1688, Madison, WI 53701-1688, telephone (608)266-1880.

APPENDIX
WISCONSIN SUPREME COURT PENDING CASES
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| Case No. | Caption/Issue(s) | SC Accepted | CA Dist/ Cty | CA Decision |
|--|---|--|-----------------|---|
| 2012AP2377 (consolidated with 2015AP870) | <u>Debra K. Sands v. John R. Menard, Jr.</u> May a fiancé/cohabitant use alleged noncompliance with Supreme Court Rule (SCR) 20:1.8(a) ("Rule 1.8(a)") as a defense to a civil suit for unjust enrichment under <u>Watts v. Watts</u> , 137 Wis. 2d 506, 405 N.W.2d 303 (Wis. 1987)? If Rule 1.8(a) can be raised as a defense to a <u>Watts</u> claim arising from a long-term romantic relationship, may a non-attorney cohabitant be found to have waived, ratified, or be estopped to assert the other cohabitant's alleged non-compliance with Rule 1.8(a)? If the Court of Appeals had considered the issues of waiver, ratification, and estoppel, does the record contain sufficient evidence to create genuine issues of fact precluding summary judgment? Can a lawyer invoke the discovery rule to bar a client's claim for breach of fiduciary duty under the applicable statute of limitations, where the lawyer, despite obligations under SCR 20:1.7(b) allegedly concealed the conflicts of interest that gave rise to such claims? | 01/20/2017 REVW Oral Arg 09/12/2017 | 3 Eau Claire | 10/26/2016 Pub. 2016 WI App 76 372 Wis. 2d 126 887 N.W.2d 94 |
| 2014AP2420 | <u>Estate of Stanley G. Miller v. Diane Storey</u> Whether statutory claims are considered tort claims for purposes of Wis. Stat. § 799.01(1). Whether Wis. Stat. § 895.446(3) allows for recovery of attorney's fees to a prevailing plaintiff. Whether the appellate court abused its discretion by taking up arguments improperly placed before the court in an appellate brief. | 01/09/2017 REVW Oral Arg 09/12/2017 | 3 Marathon | 09/28/2016 Pub. 2016 WI App 68 371 Wis. 2d 669 885 N.W.2d 787 |
| 2014AP2561 | <u>State v. David McAlister, Sr.</u> Is newly discovered evidence from witnesses swearing that the state's witnesses admitted prior to trial that they intended to falsely accuse a defendant "cumulative" and "merely tend to impeach the credibility of witnesses" such that it could not support a newly discovered evidence claim? Whether the allegations of a defendant's § 974.06 motion were sufficient to require a new trial and therefore an evidentiary hearing on his claim. | 09/11/2017 REVW | 2 Racine | -- |

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|--------------|---|--|-----------------|--|
| 2015AP175 | <u>Deutsche Bank National Trust Company v. Thomas P. Wuensch</u> Whether a trial court may accept as proven fact that plaintiff in a residential foreclosure action possesses the original promissory note at issue when counsel presented the originally executed (<i>i.e.</i> , "wet-ink") note to the court and Wis. Stat. § 909.02(9) provides that commercial paper, such as promissory notes, are self-authenticating. Whether the court of appeals, after summarily reversing a judgment of foreclosure under Wis. Stat. § (Rule) 809.21(1), should have remanded the case to the trial court to allow petitioner an opportunity to provide sworn testimony that it possesses the note. | 02/13/2017 REVV Oral Arg 10/02/2017 | 4 La Crosse | -- |
| 2015AP304-CR | <u>State v. Gerald P. Mitchell</u> Whether provisions in Wisconsin's implied consent law authorizing a warrantless blood draw from an unconscious suspect violate the Fourth Amendment to the United States Constitution. Whether the "implied consent," deemed to have occurred before a defendant is a suspect, is voluntary consent for purposes of the consent exception to the Fourth Amendment's warrant requirement. | 09/11/2017 CERT | 2 Sheboygan | -- |
| 2015AP330 | <u>State v. David Hager, Jr.</u> Effective December 14, 2013, a circuit court must grant a committed Chapter 980 patient a discharge hearing if the patient's petition alleges facts from which a factfinder "would likely conclude" that the patient's condition has changed so that he no longer meets the criteria for commitment as a sexually violent person. Wis. Stat. § 980.09(2) (2013–14). When circuit courts are determining whether a patient has met this higher "would likely conclude" standard, can the courts now compare the newly proffered evidence with evidence already in the record and submitted by the State to determine whether to grant a discharge trial? | 05/15/2017 REVV Oral Arg 11/01/2017 | 3 Chippewa | 02/22/2017 Pub. 2017 WI App 8 373 Wis. 2d 692 892 N.W.2d 740 |

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| 2015AP583 | <u>Jerome Movrich v. David J. Lobermeier</u> Does the Wisconsin public trust doctrine allow the respondent upland lot owners to install a dock onto or over a portion of the Sailor Creek Flowage bed, the record title to which bed is privately owned in fee by the petitioners, not by the State of Wisconsin in trust, as in instances of a natural lake? Does the Wisconsin public trust doctrine allow the respondent upland lot owners to directly access the water of the Sailor Creek Flowage from their upland lot where the record title to the flowage bed is privately owned in fee by petitioners, not by the State of Wisconsin in trust, as in instances of a natural lake? Does the Wisconsin public trust doctrine, in addition to bestowing the <u>public</u> with various recreational rights to and uses of navigable water, also effect the transfer of <u>private</u> property interests in instances of privately owned flowage bed? | 03/13/2017 REVW Oral Arg 09/20/2017 | 3 Price | 12/21/2016 Pub. 2016 WI App 90 372 Wis. 2d 724 889 N.W.2d 454 |
| 2015AP648-CR | <u>State v. Anton R. Dorsey</u> Whether evidence of other criminal acts committed against a person other than the victim are admissible in cases of alleged domestic abuse for the purpose of showing a generalized motive or purpose on the part of the defendant to control persons with whom he or she is in a domestic relationship. Whether the other acts testimony presented in this case was relevant to the purpose of proving intent on the part of the defendant to cause bodily harm to the victim. | 04/10/2017 REVW Oral Arg 10/23/2017 | 3 Eau Claire | Unpub. |
| 2015AP756-CR | <u>State v. Frederick S. Smith</u> When a police officer performs a lawful traffic stop, is it reasonable for the officer to make contact with the driver to ask for the driver's name and identification and to explain the basis for the stop, even if the reasonable suspicion supporting the stop has dispelled by the time the officer does so? When an officer is unable to request a driver's name and identification and explain the basis for a traffic stop because the driver indicates that the driver's side window and door are both broken, is the officer then permitted to open the passenger's side door to achieve that goal? | 01/09/2017 REVW Oral Arg 09/05/2017 | 4 Dane | Unpub. |
| 2015AP829 | <u>Penny L. Springer v. Nohl Electric Products Corporation</u> Whether the "fraudulent transfer" exception to Wisconsin's general rule against successor liability must be analyzed in the context of Wisconsin's Uniform Fraudulent Transfer Act, Wis. Stat. ch. 242, such that the petitioners are subjected to successor liability for a former entity's sale of asbestos-containing products. | 10/11/2016 REVW Oral Arg 10/02/2017 | 4 Jefferson | Unpub. |

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| 2015AP870 (consolidated with 2012AP2377) | <p><u>Debra K. Sands v. John R. Menard, Jr.</u></p> <p>May a fiancé/cohabitant use alleged noncompliance with Supreme Court Rule (SCR) 20:1.8(a) ("Rule 1.8(a)") as a defense to a civil suit for unjust enrichment under <u>Watts v. Watts</u>, 137 Wis. 2d 506, 405 N.W.2d 303 (Wis. 1987)?</p> <p>If Rule 1.8(a) can be raised as a defense to a <u>Watts</u> claim arising from a long-term romantic relationship, may a non-attorney cohabitant be found to have waived, ratified, or be estopped to assert the other cohabitant's alleged non-compliance with Rule 1.8(a)?</p> <p>If the Court of Appeals had considered the issues of waiver, ratification, and estoppel, does the record contain sufficient evidence to create genuine issues of fact precluding summary judgment?</p> <p>Can a lawyer invoke the discovery rule to bar a client's claim for breach of fiduciary duty under the applicable statute of limitations, where the lawyer, despite obligations under SCR 20:1.7(b) allegedly concealed the conflicts of interest that gave rise to such claims?</p> | <p>01/20/2017 REVW Oral Arg 09/12/2017</p> | <p>3 Eau Claire</p> | <p>10/26/2016 Pub. 2016 WI App 76 372 Wis. 2d 126 887 N.W.2d 94</p> |
| 2015AP1039 | <p><u>John Y. Westmas v. Selective Insurance Company of South Carolina</u></p> <p>Is a company, as the entity in charge of grooming and maintaining trees on recreational land, entitled to immunity under Wis. Stat. § 895.52 as an "agent" of the owner of the land?</p> <p>Is a company, as the entity in charge of grooming and maintaining trees on recreational land, entitled to immunity under Wis. Stat. § 895.52 as an "occupant" of the land?</p> | <p>03/13/2017 REVW Oral Arg 10/03/2017</p> | <p>2 Walworth</p> | <p>12/21/2016 Pub. 2016 WI App 92 372 Wis. 2d 683 889 N.W.2d 178</p> |
| 2015AP1258 | <p><u>Golden Sands Dairy LLC v. Town of Saratoga</u></p> <p>When a permit applicant secures vested rights by filing a valid building permit application for a project (Wisconsin's "Building Permit Rule"), does the law protect the applicant's right to both construct buildings and to use the project land in the lawful manner described in the building permit application? (cf., <u>McKee Family I, LLC v. City of Fitchburg</u>, 2017 WI 34, 374 Wis. 2d 487, 893 N.W.2d 12).</p> | <p>09/12/2017 REVW</p> | <p>4 Wood</p> | <p>Unpub.</p> |

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| 2015AP1311 | <u>State v. Howard Carter</u> Did the trial court err in denying petitioner a trial on his petition for discharge because 2013 Wis. Act 84 did not apply to this case and counsel was ineffective in not objecting to its application? If 2013 Wis. Act 84 applied to this case, should the saving construction applied by the court of appeals in <u>State v. Hager</u> (case no. 2015AP330, 2017 WI App 8, 373 Wis. 2d 692, ___ N.W.2d ___) be applied and was the petitioner entitled to a discharge trial under that construction? If 2013 Wis. Act 84 applied to this case, was it unconstitutional because it unduly restricted access to the courts for persons committed under chapter 980 seeking to terminate their commitment? | 05/15/2017 REVW Oral Arg 11/01/2017 | 3 Chippewa | 02/22/2017 Pub. 2017 WI App 9 373 Wis. 2d 722 892 N.W.2d 754 |
| 2015AP1331 | <u>In Re: Partnership Health Plan, Inc. v. Office of the Commissioner of Insurance</u> Is Community Health Partnership, Inc. ("CHP"), as the sole member of the nonstock insurance corporation, Partnership Health Plan, Inc. ("PHP"), the owner of PHP entitled under Wis. Stat. § 645.68(11) to be paid the surplus funds remaining in PHP's Wis. Stats. ch. 645 liquidation proceeding after all of PHP's liabilities have been satisfied? Does the Commissioner of Insurance (the "Commissioner"), as the Wis. Stat. ch. 645 liquidator of PHP, have authority under applicable law to recommend a 501©(3) charitable organization to which to pay the surplus funds of PHP remaining after all PHP's liabilities have been satisfied, and does the circuit court have subject matter jurisdiction to make that determination upon the Commissioner's recommendation? Did PHP's board of directors have authority under PHP's articles of incorporation to direct that any surplus funds in PHP's Wis. Stat. ch. 645 liquidation proceeding be paid to CHP, a section 501©(3) charitable organization, for payment of CHP's creditors? Is the resolution of PHP's board of directors providing that any surplus funds in PHP's chapter 645 liquidation proceeding be paid to CHP for payment of CHP's creditors, which was part of the PHP board resolution that the Commissioner filed with the circuit court as grounds for his appointment as rehabilitator and subsequently liquidator of PHP, nevertheless invalid because it was not expressly approved by the Commissioner under Wis. Stat. § 617.21(3g), Wis. Admin. Code § Ins 40.04, and a prior order of the Commissioner? | 04/10/2017 REVW Oral Arg 10/03/2017 | 4 Dane | Unpub. |

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| 2015AP1530 | <u>The Manitowoc Company, Inc. v. John M. Lanning</u> Whether Wis. Stat. § 103.465, which refers to a “covenant by an assistant, servant or agent not to compete with his or her employer or principal during the term of the employment or agency, or after the termination of that employment or agency,” governs non-solicitation of employees (“NSE”) clauses, which do not prohibit any individual from competing with his/her former employer. If Wis. Stat. § 103.465 governs NSE clauses: <ol style="list-style-type: none"> Whether an NSE clause, which does not prohibit competition with the former employer, should be evaluated under the same legal standard(s) as a non-compete clause. Whether the NSE provision unreasonably restrains trade. Whether the NSE provision is “reasonably necessary” to protect Manitowoc’s legitimate business interests. Whether the constitutional right to contract may be infringed through the use of hypothetical scenarios rather than the undisputed facts of a case to invalidate an NSE clause in a contract between an employer and employee. | 12/19/2016 REVW Oral Arg 09/05/2017 | 2 Manitowoc | 09/28/2016 Pub. 2016 WI App 72 371 Wis. 2d 696 885 N.W.2d 798 |
| 2015AP1586 | <u>Nationstar Mortgage LLC v. Robert R. Stafsholt</u> Whether an offset against a principal balance due on a mortgage as an award for attorney fees and costs is proper under the circumstances of the case. | 04/10/2017 REVW Oral Arg 10/23/2017 | 3 St. Croix | Unpub. |
| 2015AP1610-CR | <u>State v. Ginger M. Breitzman</u> Do our constitutional free speech protections prohibit the State from prosecuting one family member for calling another family member rude names inside the privacy of the family home? When reviewing a claim of ineffective assistance of counsel, the court of appeals must defer to the postconviction court’s fact-findings but reviews <u>de novo</u> the legal questions of deficient performance and prejudice. Within this framework, can the court of appeals defer to the legal conclusions of the postconviction court? | 03/13/2017 REVW Oral Arg 09/20/2017 | 1 Milwaukee | Unpub. |

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| *2015AP1858 | <u>Voters with Facts v. City of Eau Claire</u> Do taxpayers have standing to challenge the legality of tax incremental district ("TID")? (Wis. Stat. § 66.1105) Must the legal requisites for a formation of TID actually exist, such that their presence or absence can be challenged in a declaratory judgment action? Does the payment of a cash subsidy to a property owner for private improvements violate the Uniformity Clause of the Wisconsin Constitution or the Public Purpose Doctrine? Did the plaintiff sufficiently plead a claim that the respondent is using TID funds to reimburse an owner/developer for the destruction of historic buildings in violation of Wis. Stat. § 66.1105(2)(f)1.a.? | 10/02/2017 REVW | 3 Eau Claire | 06/28/2017 Pub. 2017 WI App 35 376 Wis. 2d 479 899 N.W.2d 706 |
| 2015AP1904 | <u>Mark Halbman v. Mitchell J. Barrock</u> Whether the court of appeals erred in affirming the circuit court's grant of the defendant's motion to dismiss on the basis that the plaintiff had failed to establish a <u>prima facie</u> case as to damages. Whether the circuit court erred in ruling that the value of the plaintiff's underlying case was conclusively established at the second trial and therefore, precluding the plaintiff from introducing evidence of the first jury verdict. | 02/13/2017 REVW Oral Arg 09/12/2017 | 1 Milwaukee | Unpub. |
| 2015AP1970 (consolidated with 2016AP2528) | <u>Donald J. Thoma v. Village of Slinger</u> The Wisconsin Property Assessment Manual states that classification of land as agricultural use "is based solely on whether use of the parcel is agricultural in nature." In that context, does an injunction prohibiting agricultural use override the agricultural tax classification of a property that is being used for agricultural purposes? | 06/15/2017 REVW | 2 Washington | -- |
| 2015AP2019 | <u>Tetra Tech EC, Inc., v. Wisconsin Department of Revenue</u> Whether a subcontractor's services are subject to Wisconsin sales and use tax (see Wis. Stat. § 77.52). Does the practice of deferring to agency interpretations of statutes comport with Article VII, Section 2 of the Wisconsin Constitution, which vests the judicial power in the unified court system? | 04/24/2017 REVW Oral Arg 12/01/2017 | 3 Brown | 01/26/2017 Pub. 2017 WI App 4 373 Wis. 2d 287 890 N.W.2d 598 |

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| 2015AP2041-CR | <u>State v. Jose Alberto Reyes Fuerte</u> Now that criminal defense attorneys are obligated to advise their clients about the immigration consequences of their pleas (<u>Padilla v. Kentucky</u> , 559 U.S. 356 (2010)), should the Wisconsin Supreme Court overturn its decision in <u>State v. Douangmala</u> , 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1, and reinstate the harmless error rule where a defendant who was aware of the potential immigration consequences of his plea attempts to withdraw the plea after the circuit court failed to give a statutory immigration warning that complied with Wis. Stat. § 971.08(1)(c)? | 01/18/2017 REVW Oral Arg 09/05/2017 | 4 Columbia | 10/26/2016 Pub. 2016 WI App 78 372 Wis. 2d 106 887 N.W.2d 121 |
| 2015AP2224 | <u>Wisconsin Association of State Prosecutors v. Wisconsin Employment Relations Commission</u> The Legislature delegated to the Wisconsin Employment Relations Commission (Commission) authority to promulgate reasonable rules of governing annual elections for bargaining representatives. Here, the Commission promulgated rules requiring that interested associations, including current representatives, give notice by petition that they wish to appear on the next annual election's ballot. The issue is whether that rule is unreasonable in light of the annual election statutes. An issue raised in the court of appeals by the plaintiffs concerns the timing of decertification. This issue only arises if the Commission has authority to decertify for failure to timely file a petition. | 02/13/2017 REVW Oral Arg Oral Arg 12/05/2017 | 1 Milwaukee | 11/16/2016 Pub. 2016 WI App 85 372 Wis. 2d 347 888 N.W.2d 237 |
| 2015AP2328-CR | <u>State v. Shaun M. Sanders</u> Can a person be criminally responsible for acts allegedly committed before the age of original juvenile court jurisdiction? | 06/12/2017 REVW Oral Arg 12/05/2017 | 2 Waukesha | 04/26/2017 Pub. 2017 WI App 22 375 Wis. 2d 248 895 N.W.2d 41 |
| 2015AP2356 | <u>Archie A. Talley v. Mustafa Mustafa</u> Does a negligent supervision claim extend to wrongful acts committed by a person with only a "special relationship" to the employer as opposed to an actual employee? When both the insurance company and the policyholder agree that an insurance policy does not provide coverage for allegations in a lawsuit, should that agreement be respected as the intent of the contracting parties? Whether "negligent supervision" or an intentional tort can be an "occurrence" or "accident" causing injury. | 07/11/2017 REVW | 1 Milwaukee | 05/31/2017 Pub. 2017 WI App 31 375 Wis. 2d 757 897 N.W.2d 55 |

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| 2015AP2375 | <u>Milwaukee Police Association v. City of Milwaukee</u> Whether a municipality may lawfully disregard specific requirements the legislature has placed on the municipality by passing an ordinance at odds with the law. Whether Home Rule allows a city to avoid mandates identified by the legislature in the Session Laws of 1937 and 1947. Whether the Session Laws of 1937 and 1947 vested Employee's Retirement System (ERS) members with the right to vote for and seat ERS board members. Whether the court's decision is in conflict with <u>Van Gilder v. City of Madison</u> , 222 Wis. 58, 267 N.W. 25 (1936) and <u>Johnston v. City of Sheboygan</u> , 30 Wis. 2d 179, 140 N.W.2d 247 (1966). | 06/12/2017 REVW Oral Arg 11/14/2017 | 1 Milwaukee | Unpub. |
| 2015AP2429-CR | <u>State v. Shannon Olanse Hendricks</u> Do Wisconsin Stat. § 971.08(1) and <u>State v. Bangert</u> , 131 Wis. 2d 246, 389 N.W.2d 12 (1986) require that a defendant entering a guilty plea to child enticement with intent to have sexual contact understands the meaning of "sexual contact"? | 05/15/2017 REVW Oral Arg 10/02/2017 | 1 Milwaukee | Unpub. |
| 2015AP2457 | <u>Cintas Corp. No. 2 v. Becker Property Services LLC</u> Whether an indemnification clause can be interpreted to provide indemnification for an indemnitee's alleged negligence when the indemnification clause does not expressly state so. Whether the choice of law provision (designating Ohio law) in the contract is enforceable. | 07/18/2017 REVW | 1 Milwaukee | Unpub. |
| 2015AP2506-CR | <u>State v. Daniel J. H. Bartelt</u> After confessing to an attempted homicide or other serious crime, would a reasonable person feel free to terminate a police interview and leave an interrogation room, such that the person is not "in custody" for Miranda (<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)) purposes? After a confession, did a defendant clearly and unequivocally invoke his right to counsel? | 06/15/2017 REVW Oral Arg 11/14/2017 | 2 Washington | 04/26/2017 Pub. 2017 WI App 23 375 Wis. 2d 148 895 N.W.2d 86 |

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| 2015AP2525-CR | <u>State v. Tydis Trinard Odom</u> In determining whether the imposition of multiple DNA surcharges constitutes "potential punishment" under Wis. Stat. § 971.08(1)(a) so that a court must advise a defendant about the surcharges before a valid plea may be taken, is the "intent-effects" test, as applied in <u>State v. Radaj</u> , 2015 WI App 50, 363 Wis. 2d 633, 866 N.W.2d 758, and <u>State v. Scruggs</u> , 2017 WI 15, 373 Wis. 2d 312, 891 N.W.2d 786, to ex post facto claims, the same analysis that was applied in <u>State v. Bollig</u> , 2000 WI 6, ¶16, 232 Wis. 2d 561, 605 N.W.2d 199, to a plea withdrawal claim? If the analysis is the same, should <u>Radaj</u> be overruled in light of the supreme court's recent decision in <u>Scruggs</u> ? | 09/12/2017 CERT | 1 Milwaukee | -- |
| 2015AP2627 | <u>Mark McNally v. Capital Cartage, Inc.</u> May the seller of a business and real estate reject an offer, and be relieved of the obligation to pay the listing broker's commission, if the offer matches the listing price but includes additional terms not explicit in the listing contract, such as a requirement that the seller work full time without pay for an undetermined amount of time, among other terms? Is this Court's ruling in <u>Libowitz v. Lake Nursing Home, Inc.</u> , 35 Wis. 2d 74, 150 N.W.2d 439 (1967) (stating that offer terms may constitute a "substantial variance" only if they directly conflict with express terms specified in the listing contract) inconsistent with this Court's interpretation of "substantial variance" in <u>Kleven v. Cities Serv. Oil Co.</u> , 22 Wis. 2d 437, 126 N.W.2d 64 (1964) and <u>Peter M. Chalik & Assocs. v. Hermes</u> , 56 Wis. 2d 151, 201 N.W.2d 514 (1972), which do not limit substantial variances to express terms in the listing contract? As a matter of public policy, should state-approved real estate forms intended for use by consumers without attorneys be construed according to their plain meaning? | 09/12/2017 REVW | 4 Dane | Unpub. |
| 2015AP2665 | <u>State v. Anthony Jones</u> Whether two actuarial instruments: the MnSOST-R and the RRASOR should be excluded as unreliable under Wisconsin's new <u>Daubert v. Merrell Dow Pharmaceuticals, Inc.</u> , 509 U.S. 579 (1993) standard. | 09/11/2017 REVW | 4 Dane | -- |

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| 2015AP2667-CR/ 2015AP2668-CR | <u>State v. Gerrod R. Bell</u> Did the prosecutor's statements, which began in <i>voir dire</i> and continued in closing argument, deprive the defendant of a fair trial by shifting the burden of proof, depriving him of the benefits of a reasonable doubt instruction and commenting on his decision not to testify where the prosecutor told the jury that in order to find the defendant not guilty: • they "have to believe" or "must believe" that the victims were lying about the alleged assaults; and • there must be evidence of a reason for the victims to lie and the defendant has presented no reason, just speculation? Was the defendant denied the right to effective assistance of counsel because the jury was given two unredacted exhibits containing information that one victim had never had sexual intercourse until she was assaulted by the defendant? | 03/13/2017 REVW Oral Arg 10/23/2017 | 4 Monroe | Unpub. |
| 2016AP21 | <u>Metropolitan Associates v. City of Milwaukee</u> Whether the lower courts erred in determining that the City of Milwaukee complied with Wisconsin property assessment law, including the mandate of Wis. Stat. § 70.32(1) that the assessor utilize the best information available, in valuing the subject property for tax years 2008-2011 and holding that the City's assessments were valid and proper. Whether the lower courts erred in holding that Metropolitan Associates failed to overcome the initial presumption of correctness contained in Wis. Stat. § 70.49. | 03/13/2017 REVW Oral Arg 09/15/2017 | 1 Milwaukee | Unpub. |
| 2016AP173-CR | <u>State v. Brian Grandberry</u> As a matter of law, is there sufficient evidence to convict a person for carrying a concealed weapon (CCW), contrary to Wis. Stat. § 941.23, if the firearm is being transported in a vehicle in full compliance with the safe transport statute, Wis. Stat. § 167.31? Is the CCW statute void for vagueness as applied to a person who transports a firearm in a vehicle in full compliance with the safe transport statute? | 03/13/2017 REVW Oral Arg 09/20/2017 | 1 Milwaukee | Unpub. |
| 2016AP238-CR | <u>State v. Michael L. Washington</u> May a defendant, by voluntary absence or other conduct, waive the statutory right to be present at trial before the trial has begun? | 04/10/2017 REVW Oral Arg 10/03/2017 | 2 Racine | 01/26/2017 Pub. 2017 WI App 6 373 Wis. 2d 214 890 N.W.2d 592 |

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX
WISCONSIN SUPREME COURT PENDING CASES
 Clerk of Supreme Court
 (608) 266-1880

| Case No. | Caption/Issue(s) | SC Accepted | CA Dist/ Cty | CA Decision |
|-----------|--|--|-----------------|--|
| 2016AP355 | <u>Wisconsin Bell, Inc. v. LIRC</u> Is LIRC's "inference method" of proof, as grounds for liability under the "because of disability" prong of the Wisconsin Fair Employment Act (see Wis. Stat. § 111.322(1)), based on a reasonable interpretation of the statute and consistent with public policy underlying the statute? If the "inference method" of proof is a valid means of proving intentional discrimination, what evidence of causation between the employee's conduct and the employee's disability is required, and should the employer have knowledge of that evidence? Was there sufficient evidence of causation and employer knowledge in this case and was it reasonable for the employer not to excuse the employee's conduct? Does the practice of deferring to agency interpretations of statutes comport with Article VII, Section 2 of the Wisconsin Constitution, which vests the judicial power in the unified court system? | 09/12/2017 REVW Oral Arg 12/01/2017 | 1 Milwaukee | 04/26/2017 2017 WI App 24 375 Wis. 2d 293 895 N.W.2d 57 |
| 2016AP474 | <u>CED Properties, LLC v. City of Oshkosh</u> Whether a plaintiff created a genuine issue of material fact such that the case should not have been decided on summary judgment. | 05/15/2017 REVW Oral Arg 11/07/2017 | 2 Winnebago | Unpub. |
| 2016AP619 | <u>Winnebago County v. J.M.</u> Whether the subject of a Wis. Stat. § 51.20(l)(a) extension of involuntary commitment and involuntary medication order has a claim for ineffective assistance of trial counsel where his lawyer fails to object to, prevent the admission of, or request a curative instruction to address, evidence of his prisoner status during his jury trial? Whether the subject of a Wis. Stat. § 51.20(l)(a) extension of commitment is entitled to a new trial in the interests of justice where the jury repeatedly sees and hears evidence of his prisoner status? | 05/15/2017 REVW Oral Arg 11/07/2017 | 2 Winnebago | Unpub. |

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|--------------|---|--|------------------|---|
| 2016AP832 | <u>Horizon Bank, National Association v. Marshalls Point Retreat LLC</u> Where a foreclosure on mortgaged premises involves a guarantor, does Wis. Stat. § 846.165 require the trial court to determine the amount to be credited against the guarantor's obligation before confirming a sheriff's sale, or does the trial court have discretion to reach that issue later? If the trial court must determine the amount to be credited against a guarantor's obligation in connection with confirming a sheriff's sale, does the guarantor have a due process right to present evidence on the question of fair value? | 05/15/2017 REVW Oral Arg 11/01/2017 | 3 Door | Unpub. |
| 2016AP866-CR | <u>State v. Diamond J. Arberry</u> When a defendant is eligible for expungement, but it is not addressed at a sentencing hearing, can the defendant raise this issue in a postconviction motion? <u>See State v. Matasek</u> , 2014 WI 27, 353 Wis. 2d 601, 846 N.W.2d 811. Did the circuit court err in its exercise of discretion when it denied expungement eligibility but gave reasons for doing so that could apply to any case? | 06/15/2017 REVW Oral Arg 11/14/2017 | 2 Fond du Lac | 04/26/2017 Pub. 2017 WI App 26 375 Wis. 2d 179 895 N.W.2d 100 |
| 2016AP983 | <u>Robert H. Shugarts, II v. Dennis M. Mohr</u> Under Wis. Stat. § 631.81 can a party be required to submit a "Proof of Loss" with respect to a claim which has not yet accrued? Can the appellate court base a decision on case law which it raised <u>sua sponte</u> without providing the parties an opportunity to address that case law? | 09/11/2017 REVW | 3 Eau Claire | 04/26/2017 Pub. 2017 WI App 27 375 Wis. 2d 225 894 N.W.2d 443 |
| 2016AP1365 | <u>Wisconsin DWD v. Wisconsin LIRC</u> Whether LIRC erred in not applying the absence standard specified by an employer because that standard was stricter than the statutory disqualification standard applicable when the employer has no policy. <u>See Wis. Stat. § 108.04 (5) €</u> . | 06/15/2017 REVW Oral Arg 12/01/2017 | 2 Ozaukee | 04/26/2017 Pub. 2017 WI App 29 375 Wis. 2d 183 895 N.W.2d 77 |
| 2016AP1496 | <u>Federal National Mortgage Association v. Cory Thompson</u> Where a foreclosure action brought on a borrower's default on a note has been dismissed, is the lender barred by claim preclusion from bringing a second foreclosure action on the borrower's continuing default on the same note? | 09/12/2017 CERT | 4 Dane | -- |

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|---|--|--|-----------------|-------------|
| 2016AP1980-W | <u>Department of Natural Resources v. Wisconsin Court of Appeals, District IV</u> Whether Wis. Stat. § 752.21 (2) applies in this case to allow the petitioner to designate the appellate court that will hear its appeal. Whether the petitioner has established the criteria to justify the issuance of an extraordinary writ. (See e.g., <u>State ex rel. Kalal v. Circuit Court for Dane Co.</u> , 2004 WI 58, ¶ 17, 271 Wis. 2d 633, 681 N.W. 2d 110) | 02/14/2017 WRIT Oral Arg 09/15/2017 | 4 Dane | -- |
| 2016AP2017-CR | <u>State v. Andre L. Scott</u> Whether a circuit court may use § 971.14(4)(b) to require a nondangerous defendant to be treated to competency against his will, and if so, whether § 971.14(4)(b) is unconstitutional on its face in light of <u>Sell v. United States</u> , 539 U.S. 166 (2003). (See <u>State v. Debra A.E.</u> , 188 Wis. 2d 111, 523 N.W.2d 727 (1994)). Whether an order requiring an inmate to be involuntarily treated to competency is a nonfinal order that should be challenged by a Wis. Stat. § 809.50 petition for interlocutory appeal or a final order of a special proceeding that is appealable as a matter of right via Wis. Stat. § 808.03(1). Whether the appellate court exercised its discretion erroneously when it denied a motion for relief pending appeal without explaining its reasoning: that it applied the proper legal standard to the facts of record and used a rational process to reach a reasonable decision. | 09/12/2017 BYPA | 1 Milwaukee | -- |
| 2016AP2196-CR | <u>State v. Steven T. Delap</u> Whether the doctrine of hot pursuit always justifies a forcible warrantless entry into the residence of a person suspected of misdemeanor criminal activity. | 07/18/2017 REVW | 4 Dodge | Unpub. |
| 2016AP2214 | <u>Madison Teachers, Inc. v. James R. Scott</u> Whether public policy against voter intimidation in certification elections outweighs public policy – and presumption – in favor of disclosing public records. | 07/18/2017 BYPA Oral Arg 12/05/2017 | 4 Dane | -- |
| 2016AP2528 (consolidated with 2015AP1970) | <u>Donald J. Thoma v. Village of Slinger</u> Whether an assessor's testimony regarding Department of Revenue guidance constitutes a reason for relief under Wis. Stat. § 806.07 (1) (h). | 06/15/2017 BYPA | 2 Washington | -- |

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